

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DONALD F. SCOTT,

Petitioner,

: Case No. 3:18-cv-334

- vs -

District Judge Walter H. Rice.
Magistrate Judge Michael R. Merz

NORMAN ROBINSON, Warden,
London Correctional Institution

:

Respondent.

DECISION AND ORDER; REPORT AND RECOMMENDATIONS

This habeas corpus action is before the Court on Respondent's Motion to Dismiss (ECF No. 11). It appeared to the Magistrate Judge that the Motion was well taken because Petitioner had not provided a new address and a Report and Recommendations was filed to grant the Motion (ECF No. 13). However, Petitioner has appeared personally at the Clerk's Office to file his Request for Extension of Time (ECF No. 14) and Motion to Stay (ECF No. 15). Petitioner has represented both in writing and orally to the Clerk that he is homeless and does not have a mailing address.

A person need not have a mailing address in order to litigate in a federal court. Furthermore, Petitioner's release from imprisonment does not render his case moot. *Maleng v. Cook*, 490 U.S. 488 (1989).

It is accordingly ORDERED that the Report and Recommendations (ECF No. 11) is WITHDRAWN and the Magistrate Judge hereby recommends the Motion to Dismiss for want of prosecution be denied. Until and unless Petitioner furnishes the Court and Respondent's counsel

with a new mailing address, the obligation of Respondent to serve Petitioner by mail is suspended; Petitioner will have to obtain notice of filings by checking the docket at the public terminal in the Clerk's Office or by obtaining remote access to the docket through the PACER system.

Petitioner's Request for Extension of time to Respond to the withdrawn Report is denied as moot.

Petitioner's Motion for a Stay pending exhaustion under *Rhines v. Weber*, 544 U.S. 269, 277-278 (2005)(ECF No. 15) is DENIED as premature. It may be renewed after Respondent files an answer/return of writ if Respondent raises the defense of lack of exhaustion. If it is renewed at that time, Petitioner must show what state court remedies he is pursuing.

Respondent's time to answer, presently set at December 5, 2018, is *sua sponte* extended to February 1, 2019.

November 29, 2018.

s/ ***Michael R. Merz***
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections

within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).